



**BILLING CODE 6345-03-P**

## **OFFICE OF GOVERNMENT ETHICS**

### **Agency Information Collection Activities; Submission for OMB Review; Proposed Collection; Comment Request for Modified Qualified Trust Model Certificates and Model Trust Documents**

**AGENCY:** Office of Government Ethics (OGE).

**ACTION:** Notice.

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**SUMMARY:** The U.S. Office of Government Ethics (OGE) is publishing this first round notice and seeking comment on the twelve executive branch OGE model certificates and model documents for qualified trusts. OGE intends to submit these forms to the Office of Management and Budget (OMB) for review and approval of a three-year extension under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). OGE is proposing minor changes to update these forms.

**DATES:** Written comments by the public and the agencies on this proposed extension are invited and must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments to OGE on this paperwork notice by any of

the following methods:

E-mail: [usoge@oge.gov](mailto:usoge@oge.gov). (Include reference to "Qualified trust model certificates and model trust documents paperwork comment" in the subject line of the message).

FAX: 202-482-9237.

Mail, Hand Delivery/Courier: U.S. Office of Government Ethics, Suite 500, 1201 New York Avenue, NW, Washington, DC 20005-3917, Attention: Paul D. Ledvina, Agency Clearance Officer.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ledvina at the U.S. Office of Government Ethics; telephone: 202-482-9247; TTY: 800-877-8339; FAX: 202-482-237; E-mail: [pledvina@oge.gov](mailto:pledvina@oge.gov). The model Certificate of Independence and model Certificate of Compliance for qualified trusts are codified in appendixes A and B to 5 CFR part 2634. Appendix C of 5 CFR 2634 provides the Privacy Act Statement for the model certificates. Copies of the proposed modified qualified trust model certificates and the model trust documents may be obtained, without charge, by contacting Mr. Ledvina.

**SUPPLEMENTARY INFORMATION:** The Office of Government Ethics intends to submit, after this first round notice and comment period, all twelve qualified trust model certificates and model documents described below (all of which are included under OMB paperwork control number 3209-0007) for a three-year extension of approval by OMB under the Paperwork Reduction Act (44 U.S.C. chapter 35). At that time, OGE will publish a second paperwork notice in the FEDERAL REGISTER to inform the public and the agencies. The current paperwork approval for the model certificates and model

trust documents, last granted by OMB in 2010, is scheduled to expire at the end of February 2013. OGE is proposing minor changes to the twelve qualified trust certificates and model documents at this time. The proposed non-substantive changes will update information in the forms to reflect OGE's recent amendments to the executive branch regulation regarding qualified trusts in subparts D, E, and Appendixes A and B of 5 CFR part 2634. See 77 FR 39123-39150 (July 2, 2012). Other changes will update agency telephone and FAX contact numbers, and provide an updated Privacy Act Statement on the model trust documents reflecting changes made to the OGE/GVT-1 System of Records 2003-2012. See 68 FR 3097-3109 (January 22, 2003), as corrected at 68 FR 24744 (May 8, 2003), 76 FR 24489-24490 (May 2, 2011) and 77 FR 45353 (July 31, 2012). However, these Privacy Act updates to OGE/GVT-1 have not been incorporated into the current version of the Privacy Act Statement, 5 CFR part 2634 appendix C, covering the Certificate of Independence and Certificate of Compliance, 5 CFR part 2634 appendixes A and B. OGE will continue to inform users of the certificates of the updates to the Privacy Act Statement.

OGE is the supervising ethics office for the executive branch of the Federal Government under the Ethics in Government Act of 1978 (EIGA). Presidential nominees to executive branch positions subject to Senate confirmation and any other executive branch officials may seek OGE approval for EIGA qualified blind or diversified trusts as one means to be used to avoid conflicts of interest.

OGE is the sponsoring agency for the model certificates and model trust documents for qualified blind and diversified trusts of executive branch officials set up under section 102(f) of the Ethics in Government Act, 5 U.S.C. app. § 102(f), and OGE's

implementing financial disclosure regulations at subpart D of 5 CFR part 2634. The various model certificates and model trust documents are utilized by OGE and settlors, trustees and other fiduciaries in establishing and administering these qualified trusts.

There are two categories of information collection requirements that OGE plans to submit for renewed paperwork approval, each with its own related reporting model certificates or model trust documents which are subject to paperwork review and approval by OMB. The OGE regulatory citations for these two categories, together with identification of the forms used for their implementation, are as follows:

i. Qualified trust certifications – 5 CFR 2634.404(f) and (g), 2634.405(c) and (d), 2634.407, 2634.408(d)(4), 2634.410, 2634.414 and appendixes A and B to part 2634 (the two implementing forms, the Certificate of Independence and Certificate of Compliance, are codified respectively in the cited appendixes); and

ii. Qualified trust communications and model provisions and agreements – 5 CFR 2634.404(f), 2634.407(a), 2634.408(a)-(c), 2634.407 and 2634.414 (the ten implementing forms are the: (A) Blind Trust Communications (Expedited Procedure for Securing Approval of Proposed Communications); (B) Model Qualified Blind Trust Provisions; (C) Model Qualified Diversified Trust Provisions; (D) Model Qualified Blind Trust Provisions (For Use in the Case of Multiple Fiduciaries); (E) Model Qualified Blind Trust Provisions (For Use in the Case of an Irrevocable Pre-Existing Trust); (F) Model Qualified Diversified Trust Provisions (Hybrid Version); (G) Model Qualified Diversified Trust Provisions (For Use in the Case of Multiple Fiduciaries); (H) Model Qualified Diversified Trust Provisions (For Use in the Case of an Irrevocable Pre-Existing Trust); (I) Model Confidentiality Agreement Provisions (For Use in the Case of

a Privately Owned Business); and (J) Model Confidentiality Agreement Provisions (For Use in the Case of Investment Management Activities)).

The communications formats and the confidentiality agreements (items ii.(A), (I) and (J) above), once completed, would not be available to the public because they contain sensitive, confidential information. All the other completed model trust certificates and model trust documents (except for any trust provisions that relate to the testamentary disposition of trust assets) are retained and made publicly available based upon a proper request under EIGA (by filling out an OGE Form 201 access form) until the periods for retention of all other reports (usually the OGE Form 278 Public Financial Disclosure Reports) of the individual establishing the trust have lapsed (generally six years after the filing of the last other report). See 5 CFR 2634.603(g)(2) of OGE's executive branch financial disclosure regulation.

The U.S. Office of Government Ethics administers the qualified trust program for the executive branch. At the present time, there are no active filers using the trust model certificates and documents. However, OGE intends to submit to OMB a request for extension of approval for two reasons. First, under OMB's implementing regulations for the Paperwork Reduction Act, at 5 CFR 1320.3(c)(4)(i), any recordkeeping, reporting or disclosure requirement contained in a sponsoring agency rule of general applicability is deemed to meet the minimum threshold of ten or more persons. Second, OGE does anticipate possible limited use of these forms during the forthcoming three-year period 2013-2016. Therefore, the estimated burden figures, representing branchwide implementation of the forms, will remain the same as previously reported by OGE in its prior first and second round paperwork renewal notice for the trust forms in 2009

(74 FR 47799-47801 (September 17, 2009) and 74 FR 62780-62782 (December 1, 2009)). The estimate is based on the amount of time imposed on a trust administrator or private representative.

i. Trust Certificates:

A. Certificate of Independence: total filers (executive branch): 5; private citizen filers (100%): 5; private citizen burden hours (20 minutes/certificate): 2.

B. Certificate of Compliance: total filers (executive branch): 10; private citizen filers (100%): 10; private citizen burden hours (20 minutes/certificate): 3; and

ii. Model Qualified Trust Documents:

A. Blind Trust Communications: total users (executive branch): 5; private citizen users (100%): 5; communications documents (private citizens): 25 (based on an average of five communications per user, per year); private citizen burden hours (20 minutes/communication): 8.

B. Model Qualified Blind Trust: total users (executive branch): 2; private citizen users (100%): 2; private citizen burden hours (100 hours/model): 200.

C. Model Qualified Diversified Trust: total users (executive branch): 1; private citizen users (100%): 1; private citizen burden hours (100 hours/model): 100.

D.-H. Of the five remaining model qualified trust documents: total users (executive branch): 2; private citizen users (100%): 2; private citizen burden hours (100 hours/model): 200.

I.-J. Of the two model confidentiality agreements: total users (executive branch): 1; private citizen users (100%): 1; private citizen burden hours (50 hours/agreement): 50.

However, the total annual reporting hour burden on filers themselves is zero and not the 563 hours estimated above because OGE's estimating methodology reflects the fact that all respondents hire private trust administrators or other private representatives to set up and maintain the qualified blind and diversified trusts. Respondents themselves, typically incoming private citizen Presidential nominees, therefore incur no hour burden. The estimated total annual cost burden to respondents resulting from the collection of information is \$1,000,000. Those who use the model documents for guidance are private trust administrators or other private representatives hired to set up and maintain the qualified blind and diversified trusts of executive branch officials who seek to establish such qualified trusts. The cost burden figure is based primarily on OGE's knowledge of the typical trust administrator fee structure (an average of 1 percent of total assets) and OGE's experience with administration of the qualified trust program. The \$1,000,000 annual cost figure is based on OGE's estimate of an average of five possible active trusts anticipated to be under administration for each of the next two years with combined total assets of \$100,000,000. However, OGE notes that the \$1,000,000 figure is a cost estimate for the overall administration of the trusts, only a portion of which relates to information collection and reporting. For want of a precise way to break out the costs directly associated with information collection, OGE is continuing to report to OMB the full \$1,000,000 estimate for paperwork clearance purposes.

Public comment is invited on each aspect of the model qualified trust certificates and model trust documents, and underlying regulatory provisions, as set forth in this notice, including specific views on the need for and practical utility of this set of collections of information, the accuracy of OGE's burden estimate, the potential for

enhancement of quality, utility and clarity of the information collected, and the minimization of burden (including the use of information technology).

Comments received in response to this notice will be summarized for, and may be included with, the OGE request for extension of the OMB paperwork approval for the set of the various existing qualified trust model certificates, the model communications package, and the model trust documents. The comments will also become a matter of public record.

Approved: December 20, 2012.

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**Don W. Fox,**

Acting Director, Office of Government Ethics.

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